SESSION 1938

HOUSE OF COMMONS

STANDING COMMITTEE

ON

RAILWAYS, CANALS AND TELEGRAPH LINES

MINUTES OF PROCEEDINGS AND EVIDENCE

Respecting

BILL No. 31—THE TRANSPORT ACT, 1938

No. 2

THURSDAY, MAY 5, 1938

WITNESSES:

Mr. I. C. Rand, K.C., Divisional Counsel, Canadian National Railways.
Mr. G. A. Walker, K.C., General Counsel, Canadian Pacific Railway Company.
Mr. W. E. Campbell, Chief Traffic Officer, Board of Railway Commissioners.

OTTAWA
J. O. PATENAUDE, I.S.O.
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MINUTES OF PROCEEDINGS

THURSDAY, May 5, 1938.

The Standing Committee on Railways, Canals and Telegraph lines met at 10.30 a.m. Mr. Vien, the Chairman, presided.

Members present: Messrs. Barber, Bertrand (*Laurier*), Brown, Cameron (*Hastings North*), Clark (*York-Sunbury*), Cochrane, Damude, Duffus, Dupuis, Edwards, Emmerson, Fiset (Sir Eugène), Francœur, Gladstone, Hamilton, Hanson, Howden, Hushion, Isnor, Lockhart, MacInnis, MacKinnon (*Edmonton West*), MacNicol, McCallum, McCann, McCulloch, McIvor, McKinnon (*Kenora-Rainy River*), McNiven (*Regina City*), Maybank, Mutch, Parent (*Terrebonne*), St-Père, Stevens, Streight, Vien, Wermenlinger, Young.

In attendance: Hon. Mr. Howe, Minister of Transport; Hon. Mr. Guthrie, Chief Commissioner, Board of Railway Commissioners; Mr. W. E. Campbell, Chief Traffic Officer, Board of Railway Commissioners.

The Committee resumed consideration of Bill No. 31, An Act to establish a Board of Transport Commissioners for Canada, with authority in respect to transport by railways, ships and aircraft.

Complying with a resolution adopted by the Committee on April 5, the Chairman announced that he had appointed a sub-committee on agenda consisting of Messrs. Edwards, Sir Eugène Fiset, Howden, Isnor, Johnston (*Bow River*), MacKinnon, McCann and Stevens to assist him in determining the order in which witnesses should be heard, and that, after consideration, that sub-committee had decided that the railways should be heard first, followed by representatives of shipping and aircraft interests.

Mr. I. C. Rand, K.C., Divisional Counsel, Canadian National Railways, and Mr. G. A. Walker, K.C., General Counsel, Canadian Pacific Railway Company, were present to represent the railways.

Mr. Rand was called. He read a prepared statement in support of the bill, and replied to objections made at the previous meeting by Mr. Brown of the Canadian Manufacturers Association.

Mr. G. A. Walker was called. He answered objections made respecting "Agreed Charges," stating that, in his opinion, the Canadian Manufacturers Association had made every objection that could be made.

Mr. W. E. Campbell, Chief Traffic Officer, Board of Railway Commissioners, was called and questioned briefly with respect to Railway Board practice in regard to authorized discriminatory rates.

Mr. Walker was again heard in rebuttal of objections advanced against the bill, and was questioned.

Mr. Brown, Canadian Manufacturers Association, filed a letter respecting alleged mistakes in the printed evidence of April 28. (*See Appendix to this day's evidence.*)

The Committee adjourned until to-morrow, Friday, May 6, at 10.30 a.m.

JOHN T. DUN,
Clerk of the Committee.

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MINUTES OF EVIDENCE

HOUSE OF COMMONS, ROOM 277,

May 4th, 1938.

The Select Standing Committee on Railways, Canals and Telegraphs, met at 10.30 a.m. Mr. Thomas Vien, the chairman, presided.

Appearances:

I. C. Rand, K.C., Divisional Counsel, Canadian National Railways, Montreal.

G. A. Walker, K.C., General Counsel, Canadian Pacific Railway, Montreal.

The CHAIRMAN: Order, gentlemen. We have a quorum now.

I want to advise the committee that pursuant to the resolution of April 5th the chairman was empowered to appoint an agenda committee to act with him in relation to proceedings to be taken regarding the consideration of Bill No. 31. I have appointed the following members of the committee to act with me on that sub-committee: Messrs. Edwards, Sir Eugène Fiset, Isnor, Johnston (*Bow River*), McKinnon, McCann, Hon. H. H. Stevens and Howden.

The sub-committee met last week to determine the agenda of the sittings for this week and after proper consideration of all that was involved it was found advisable to stick to the first arrangement that had been made; namely, that the railways' representatives should first be heard and then shipping, and then airlines. So we have determined that to-day the representatives of the railway company should be heard; that to-morrow the interests of shipping should be heard; and on Tuesday next the aircraft people. Then will come the boards of trade and representatives of the various provincial governments; then the National Millers, the Corn Exchange, and the Industrial Traffic League as well as the Canadian Automotive Transportation Association. These interested parties will be duly notified as soon as we have made sufficient progress with the railways, the shipping and the aircraft.

Now, I understand that there are representatives of the Canadian Pacific Railway and the Canadian National Railway here, and I have been advised that Mr. Rand and Mr. Walker will address the committee. Is it the pleasure of the committee to hear Mr. Rand and Mr. Walker?

Carried.

Mr. I. C. Rand, K.C., Divisional Counsel, Canadian National Railways, Montreal, called.

The WITNESS: Mr. Chairman, Mr. Walker and I are representing the Canadian Railway Association. We have prepared a general submission dealing with the principal features of the Act and this will now be distributed to the members of the committee.

By Mr. Hanson:

Q. Would you mind telling the committee whom the Railway Association consists of?—A. All the railways interested; that means the Canadian Pacific and the Canadian National Railways.

The CHAIRMAN: Yes, the Canadian Pacific and the Canadian National Railways; and they have prepared a joint submission, if I understand rightly.

The WITNESS: Yes, sir.

The CHAIRMAN: Will you give your first name and your function.

The WITNESS: I. C. Rand, Divisional Counsel, Canadian National Railways, Montreal. Perhaps it would be well for me to read this submission, because I believe it would be more easily followed; and when that is completed other points might be discussed.

The CHAIRMAN: I would just say to the committee that if it is your desire that it has been a procedure that has functioned very well, and I would suggest that Mr. Rand be allowed to make his submission and then members of the committee might put questions; because very often where any other course is followed a question is put that will be answered by a paragraph that is going to be read into the record in a few minutes afterwards.

The railways support this Bill because they believe that the principles which it embodies are necessary to bring about the most efficient and economic adjustment in the functioning of the several transport agencies of this country. During the past twenty-five years the factors determining modes of carriage have undergone tremendous changes and developments. Transportation is no longer limited to railways and vessels. The greater part of that field is now served by motor vehicles, the advent of which has revolutionized the business of transport. To-day the vast body of this activity is free from effective regulation. Carriage by water, while regulated in some respects, is untouched in rate control. During this period, however, the regulatory control over railways has remained unchanged. What the Bill proposes is a modification of public regulation first, by an extension to certain carriers of those controls which, in the case of the railways, have in the past proved to be in the public interest, and, secondly, as to all regulated carriers, the extension of a limited freedom of action, the unequal enjoyment of which by competing services has produced a maladjustment in the transport field as a whole. The purpose is in fact to achieve by means of certain controls on the one hand and certain liberations on the other, what may be called a more balanced economy in transportation.

We concede at once the place of air, water and truck carriage in that economy. Each has its legitimate scope within which it must justify itself by its own capacity to function with greater ultimate benefit to the community than its competitors. But to obtain that maximum of utility it is necessary that each function be carried on under fair, equitable and comparable conditions. What in the present set-up we object to is the fact that the railways are being asked to perform their part in this co-ordination while bound virtually hand and foot against competitors with scarcely a fetter or a restriction upon unlimited freedom of action. The railways of this country are bound up with the national life; indeed, without exaggeration, one may say the national existence. By reason of our geographical conditions, our climate, and the character of our economic life, they will remain indefinitely the vital necessity of our national vigour. If we accept that premise then it follows that they must be accorded a just equality of means and powers with their competitors, if they are to acquit themselves according to their capacities. That that is the insistent requirement of to-day admits of no controversy and the measures here proposed are designed to achieve that end.

Specifically the bill provides conditions under which the different forms of transport will compete more nearly on an equality than they do to-day. This is done in two ways: first, by applying to carriers by water and air the principle of rate publicity and control which has justified itself in relation to railways; and, secondly, by a relaxation of the present regulation of railways in respect of rates through the means of the agreed charge which shall extend to all carriers brought under the bill.

The provisions of the bill will not, however, do more than effect a partial regulation of public transport, other than railways, throughout Canada. The various forms that will still remain untouched by regulation will be:—

(*a*) Highway transport;

(*b*) Water carriage of goods in bulk;

(*c*) Carriage by water between ports in British Columbia, or between ports in the Maritime Provinces, Hudson Bay and the Gulf of St. Lawrence east of Father Point.

Let us first deal with the extension of regulation. It may with confidence be laid down that:—

1. Regulation of railways has on the whole been in the national interest and that its principles are sound;

2. Co-ordination of the several forms of transport is essential to their most efficient utilization. This co-ordination can be brought about only by the process of competitive determination but it is obvious that the results will be distorted unless that competition is on equal terms. To ascertain those terms and to apply them to all is then the essential condition of a balanced transport organization.

The reasons which prompted the regulation of railways are often misunderstood. It is generally assumed that the predominating reason was the fear that monopoly or quasi-monopoly would result in unreasonably high rates. That was not the case. The governing considerations were the evils of (*a*) unrestrained competition, and (*b*) discrimination.

The fear of monopoly was secondary and existed chiefly in respect of two possibilities of the situation:—

(*a*) that the intense competition without regulation would force rates up on non-competitive points, or would force the stronger railroad to absorb its weaker competitor, and thus create monopoly;

(*b*) that regulation without outside competition would drive the railways together in the matter of rates and, having done that, there would be danger of over-charging through agreement between them.

A clear picture of the conditions which led to railway regulation is to be found in the reports of Professor S. J. McLean to the Honourable A. G. Blair, Minister of Railways, dated February 10, 1899, and January 17, 1902, both of which are contained in sessional paper No. 20 (*a*) in 1902.

At page 16 Professor McLean describes the experience in the United States, in part as follows:—

> During the rate wars many illicit devices had been used in the struggle for traffic. Rebates, secret rates, discrimination, personal and local had been lavishly employed. The stress of wasteful competition had driven down competitive rates to hard-pan. If the railways were to equalize matters an increased rate on the non-competitive traffic seemed to be necessary. . . . The new attitude was one of belief in the necessity of State regulation.

At page 36 he describes the conditions in Canada due to the influence of competitive rates. He tells of communities, which did not have the advantage of competitive rates, being forced to take their produce by wagon to the nearest point where these rates could be obtained.

In another paragraph, on the same page, he describes the effect of competition with American railways for export traffic, and in a further paragraph he points out that the manipulation of rates was responsible for the growth of the larger communities at the expense of the smaller.

As early as 1899 Professor McLean had enunciated the principle that competition without regulation may be disastrous, for the reason, among others, that it tends to lead to the elimination of competition and the creation of monopoly. At page 4 of his report he says:—

> It may be urged that the effective way to control rates is through the establishing of competing lines. To a certain extent this is effective. But the limits must be borne in mind. The competition is not of the same nature as in ordinary business. In railroading it is often the weaker road which forces upon the stronger road ruinous competition. The weaker road, when in a bankrupt condition, has nothing to lose and everything to gain by slashing rates. The restraining influence of solvency is not present. In fairness to railroads, which are solvent, regulation of rates through such competition should not be relied upon. The stronger road may be forced in self defence, to obtain control of the weaker and bankrupt competitor. Such was the case in regard to the relation between the New York Central and the West Shore. Even were the competing lines equally solvent the dependence upon continuing effective competition is futile....Although competition may exist for a time, yet in the long run the roads will find it more convenient to enter into agreements, formal and informal.

Beginning at page 73 and continuing to page 74 Professor McLean dealt with the regulation of rates, and recommended against the fixing of maximum tariffs.

Professor Miller, of the University of Iowa, in his book on "Inland Transportation" published in 1933, describes in more detail the ruinous competition between railways in the United States in these early days. Among his examples are that in a certain instance a freight rate between Chicago and the seaboard was $5 per car load in the face of a normal rate of $110 per car, that passengers were carried between New York and Chicago for $1 each, and that it was said that similar passenger fares had been in effect between Chicago and San Francisco, including meals. He gives further instances of rate fluctuations in the year 1876. In January a given rate was 75 cents per 100 pounds. In July of the same year it was 15 cents per 100 pounds, and had been $1 per 100 pounds in January of the previous year. His comment is as follows:—

> and this struggle injured shipper as well as railway, for even high rates are less disturbing and less hurtful to the patron than rapidly and widely changing rates.

He goes on to describe that the carriers took steps by agreement to save themselves from ruin. Some of these steps were not looked upon with favour because they tended to produce monopoly. This the public feared, and between the extremes of unrestrained competition and monopoly a middle course was found in Government regulation.

It was well known to the Board of Railway Commissioners that prior to its creation the railways had issued thousands of special rate notices which were really secret rates for individual shippers. Every division freight agent of the railways had authority to issue these notices apart from the printed tariffs. When, under the Railway Act, it became necessary to file all tariffs with the Board these special rates disappeared and the tariff rates applied to all. The effect of this was that between 1904 and 1914 out of six major rate cases tried by the Board, five of them resulted in reductions being ordered; and the chief beneficiaries in the process were the smaller shippers whose larger competitors had previously had the advantage of the secret rates which regulation eliminated. Here was a striking demonstration of the power of regulation to restore equality of commercial position between large and small shippers and at the same time to bring rates within the bounds of reasonableness.

Now the conditions described are being repeated in Canada, not in the railway services, but in water and highway transport. Secret rates, rebates, and discrimination all flourish at the present time, and these conditions are forcing the railways to publish rates which aggravate the discrimination between localities brought about by these other services. In this way, unregulated competition tends to disrupt established commercial relationships by methods that are essentially impermanent.

These uncontrolled rates are fluctuating daily and this, as the foregoing excerpts show, is undesirable because of their effect on business generally. As Professor Miller points out, the stability of rates within reason is essential if we are to get the greatest advantage from our transportation machine. If these methods and practices were bad in the past they are equally bad now, and if regulation was an effective remedy then it will be so to-day.

The Bill provides for controlling the number of water and air carriers and their rates through the issue of licences. That public convenience and necessity should constitute the warrant for new public carriage services is now unquestioned and this feature is in accord with the soundest opinion of to-day.

In the next place, it requires that rate for these carriers shall be published and charged equally to all persons; that they shall be reasonable and free from unjust discrimination, and be subject to disallowance if they are not. These are principles that, from the standpoint of the general welfare, do not admit of challenge.

Under the present system unreasonably low rates secretly conceded to preferred shippers or compelled by open and unrestrained competition force these unregulated carriers to recoup themselves from the smaller and less powerful shippers and from rates on non-competitive traffic. What regulation will do is raise the unreasonably low preferential rates and lower the non-competitive and unreasonably high discriminatory rates and this in turn will produce stability as in the case of railway rates under the Railway Act.

Let us now consider the second branch of the Bill's proposal, the agreed charge. An agreed charge is simply a rate, embodied in a contract between shipper and carrier. The contract may provide for the whole or a specified portion of all the goods of the shipper and it may specify the time during which the charge shall remain. The charge must be approved by the Board of Transport before it becomes effective; it must be filed with that Board, its approval in the event of objection is after a public hearing, and it remains open to public inspection.

Now there is nothing in the Railway Act which prevents a railway from negotiating with a shipper for his entire business. But a rate so accepted must be made a public rate and open to all shippers alike. The other shippers are then in a position to take advantage of that special rate when it suits their purpose to do so and to seek other carriers when lower rates may be available to them. Arrangements of this kind are made in the ordinary run of railway administration: the practice is of long standing: and the effective operation of the proposed legislation is to validate that arrangement with the individual shipper to the exclusion of all others who are not prepared to accept the rate on similar conditions. The agreed charge is universally practised by water and truck carriers; it is an essential part of their traffic mechanics; from the standpoint of fairness, equality and economics, why should the railways be denied the same right?

No sound reason has as yet been suggested. What we hear are expressions of vague apprehensions and fears on the part of shippers and competing carriers that (*a*) the small shipper will be sacrificed to the large shipper and (*b*) that the device will be used as an instrument not to promote legitimate competitive action but to destroy competitors.

Let us consider these in their order. At the present time what is the position of the small shipper as against his large competitor? The very fact of his existence shows that he is prepared to compete on the basis of existing services. But how is he protected in the unregulated services? He is not protected at all; he is subject to the same discrimination by secret arrangements that oppressed him before the regulation of railways. Under the Railway Act he is in exactly the same position as his competitor as to the rates which his shipments will carry. What will his position under an agreed charge be? Precisely the same. The essential terms of the Railway Act dealing with unjust discrimination have been incorporated in this Bill verbatim; and as under that Act no change in a rate can be made which will unjustly effect the existing competitive relation between the shippers, so here, under similar conditions, an agreed charge is bound by the same limitations and restrictions. It cannot, therefore, be emphasized too strongly that the actual relative competitive position of a small dealer towards his larger competitor will not be affected adversely by an agreed charge if he is willing to submit to the same terms as his competitor.

Then there is the fear of destroying competitors. This is really a plea for a preferred position. From 1903 to this moment, notwithstanding the freedom of action allowed railways in respect of competitive rates, what competing bodies have been destroyed by the action of the railways? The latter have always had advantages in respect of the field and periods of operation over all other forms and have always been in a position to meet the rates of competitors; but these competitors remain: why have they not been destroyed? The answer is that the railway agencies are responsible bodies that have vast interests in this country; their administration must be based on sound economic policies: they must justify competitive action by the net results; they cannot go beyond the actual competitive pressure without producing discriminatory effects in the commercial field which would effect the whole rate structure: they are quasi-public organizations subject to the over-riding public control of a governmental body; and both the internal administration and the external control negative the use of railway power to a purely destructive end. And what is the nature of the competition which now presents itself? Is it conceivable that any action by the railways, much less that approved by the Board of Transport, could work destruction to such a resilient agency as water carriage? These individual units possess little of the inherent weaknesses of railways: they have a flexibility both in respect of cost and mobility, and an economy in operation which exclude the the possibility of eliminating them from the public service by any competition.

Moreover, the vast unregulated carriage must also be taken into account here. The activities that have struck the deadly blow at railways have been those of public and private automobile trucks. The extent to which the carriage of commodities has been taken over by them is a matter of common knowledge.

Not only is highway transport unregulated but it is not to-day carrying its legitimate charges and to that extent is the beneficiary of public assistance. The trucks have extended their operations into fields which in our opinion are legitimately open to the railways and against these and like public and private competitors the railways declare they must be given greater freedom of action.

But let us consider the safeguards with which the Bill surrounds the agreed charge. There are many of them. There is first the necessary approval of the Board of Transport. For this the Board is to have regard to the effect of the charge (a) on the net revenue of the carrier and (b) on the business of any shipper who objects to the charge. That approval is to be given only after interested parties who desire it have been heard, and specific permission is given to any carrier under the Act to be heard. There is no more serious concern of the railways than that of their net revenues and this deterrent is the surest

safeguard against improvident arrangements. Their past history in competitive rates is a conclusive answer to the suggestion that they would even propose such arrangements.

There is next the requirement as to unjust discrimination. An agreed charge must contemplate a possible adverse effect on commercial interests anywhere within the competitive area and the carrier must be prepared to remove that discrimination by an extension of the basis of the charge to those so affected. In this respect the situation is precisely the same as under the Railway Act. No agreed charge can unjustly affect the actual commercial relationships existing at the time it is proposed. The charge in fact is a matter only between carriers: in a commercial aspect, it concerns them and them alone.

There is next the prohibition against the approval of an agreed charge if the Board should consider that the object to be secured "can, having regard to all the circumstances, be adequately secured by means of a special or competitive tariff of tolls under the Railway Act or this Act." This is a provision to restrict the use of the agreed charge to circumstances which modern conditions have placed beyond the control of those long established methods contemplated and approved by the Railway Act. That new conditions should call forth new measures to deal with them is obvious and this the bill, by its provisions, under the safeguard mentioned, recognizes.

Finally, there is section 37. Here is a specific provision to preserve to Canadian business life the services of every agency of carriage which are in the national interest. What more fundamental safeguard could surround the agreed charge as a protection against its unfair use? What more could any such undertaking ask for? Every legitimate interest and function is here made a matter of public concern and by means of a public determination, the national interest as paramount is to be served. What greater shield could be thrown around essential enterprise it is difficult to imagine.

Similar causes have produced like transportation problems in other lands and the study of solutions has dictated similar remedies. In England, the agreed charges have been in effect for five years: in France for a lesser period and they have lately been authorized in Australia. Their special merit is that while they offer no obstacle to the competitive determination of rates on the cost of service basis, they furnish a flexibility in rate mechanics which is necessary to full, equal and beneficial competitive functioning.

The railways submit, therefore, that:—

(*a*) The regulation of air and water carriers, as proposed by the bill, is in the interests of the shipping public, the general public and the carriers themselves. It will bring them, as enterprises of magnitude, within the framework of control which is now the accepted condition for railways and which is, beyond question, in the national interest.

(*b*) The provision of an agreed charge is of vital importance to the railways, as well as to the other forms of transport, to enable them to meet the competing services of other agencies and to determine the boundaries of the legitimate field of each regulated and unregulated service. It is dictated by the new factors in modern carriage and unless it is granted the railways shall be permanently handicapped in their efforts to obtain their proper share of the transportation business of Canada.

Mr. Chairman, may I say that Mr. Walker has made a detailed examination of the more substantial objections that have been placed before the committee to this bill, and he will be prepared to answer any questions that may be put to him on those features of it.

There are just two minor points that I would like to refer to at this moment which were raised, I think, by Mr. Brown of the Canadian Manufacturers' Association. The burden of Mr. Brown's complaint was that it changed the

basis of the principle of the application of unjust discrimination. He says that under the accepted rulings of the Board of Railway Commissioners unjust discrimination—

Mr. MacNicol: From what page are you reading?

The Witness: I am not reading from any page, I am just stating what Mr. Brown laid before the committee. He said that the factors that were taken into account by the board in dealing with all questions of that sort were traffic factors; that these introduced language which would not restrict the board to those same circumstances and conditions. I merely desire to draw the attention of the committee to sub-section 2 of the Act. It is at the bottom of page 2, and reads:—

> Unless it is otherwise provided, or the context otherwise requires, expressions contained in this Act shall have the same meaning as in the railway Act.

Now the expression "unjust discrimination" is an expression that is used in the railway Act and it has a well defined meaning as a result of its judicial interpretation by the board. And the provision that that expression shall have the same meaning in this Act excludes the possibility of the interpretation that Mr. Brown has suggested. We may accept it, therefore, beyond any question that if unjust discrimination means one thing under the railway Act it means the same thing under this Act. There is no possibility of doubt on that.

Then he raised a question on the introductory language to section 35. He said, "Notwithstanding anything in the railway Act, or in this Act or in any other statute"—a carrier may make an agreed charge. The reason for doing that is that under the railway Act a carrier cannot make a legally binding agreed charge because he cannot discriminate in the rates between A and B. Consequently it was necessary, rather, it was considered good draftsmanship to make it clear that he could make this arrangement, notwithstanding, either express or implied, the prohibitive provisions of the railway Act. But that simply goes to the validity of the agreement. The other clauses of the railway Act are incorporated in section 35 by the use of similar terms; and, therefore, this Act gives you the power to make a valid and binding agreement called an agreed charge. But it subjects that charge, as a rate, to all of the provisions of the railway Act with respect to discrimination. So I really think that a more accurate appreciation of the language of this Act would dispose of the entire objections raised by Mr. Brown.

If I may be excused, Mr. Chairman, Mr. Walker will be prepared to answer any detailed questions.

The Chairman: Thank you, Mr. Rand.

George A. Walker, K.C., *General Counsel Canadian Pacific Railway.*

Mr. Walker: Mr. Chairman and gentlemen, I am appearing jointly with Mr. Rand for the Railway Association of Canada, and I desire to associate myself with the statements he has just made.

At the meeting of the sub-committee which was held the day before yesterday it was suggested that insofar as objections had already been laid before the committee the railways might answer those objections in detail, reserving, as I understand it, Mr. Chairman, the right to the railways to say a word in rebuttal to such objections as should be laid before the committee subsequently with regard to all the aspects of the bill. At the moment, the only objections that the committee have before them are those of the Canadian Manufacturers' Association which deal almost exclusively with the subject of agreed charges; and

with your permission, Mr. Chairman, I propose to confine myself to-day to the subject of agreed charges, because obviously we cannot answer objections to the other phases of the bill which have not yet been heard by the committee.

Now, with regard to agreed charges. While, as I say, the only objections that the committee has before it are those of the Canadian Manufacturers' Association, I think those objections cover every objection that can be made. Certainly they cover every objection that has so far been suggested in any of the briefs that have been filed. I have paraphrased them as accurately as I can, and propose to answer each one of them seriatim.

I am sorry that as it was only the day before yesterday that we were informed of the change of procedure we did not anticipate that we would be called on to-day, but rather a couple of weeks hence, and I have not this memorandum in such shape that I can distribute it. But I would like to read it into the record.

It is objected with regard to agreed charges:—

That the bill will open the door to all the abuses that existed before railway rates were regulated, such as rebates, secret commissions, etc. We answer that in this way: That if it were true, the railways would be as violently opposed to this bill as any one the committee has heard or may hear on that subject.

In our submission, however, no such results can follow in the face of the requirements of the board's approval after such notice as the board may direct and a hearing of the parties interested, and in view also of the provisions for extending the agreed charge to anyone who satisfies the board that he is or will be discriminated against. To put it in another way, Mr. Chairman, the fundamental evil which lay at the bottom of all the secret practices that are referred to before the regulation of railways in 1903 was that they were carried on in secret. If they had been carried on in the open you would have had a violent and destructive rate war between the railways, such as is described in the extracts in Professor McLean's report which were referred to in Mr. Rand's submission. To-day the bill provides that every agreed charge must be submitted to the Board of Railway Commissioners for approval, and that such notice shall be given as the board directs. So that the element of secrecy which lay at the root of all these objections or practices in the past is completely eliminated.

Mr. YOUNG: Just what sort of rulings do you think the board could make?

The WITNESS: I am coming to that in the very next objection, if you will permit me.

It is objected: That the public will not know what agreed charges are being applied for and may be hurt without warning. The answer is this is a mere question of machinery. The board has ample power to direct what notice shall be given. They are advised by a capable traffic officer who is familiar with traffic movements and who knows how the movement will be affected by any given agreed charge. The board has been administering the Act for thirty-five years, and there has never been any complaint about lack of notice with regard to any form of discrimination or rate publication, or what have you. The board has issued complete regulations governing the publication, filing and posting of tariffs.

The board in 1929, as is referred to and emphasized in the brief of the Canadian Manufacturers' Association, issued a general order No. 475, which provides in the most meticulous detail for bringing to the notice of the public any change whatever in the tariff regulations or in rates.

I suggest that it cannot be supposed that the board will be any less zealous to enforce the provisions of this bill than they have been in the past regarding the enforcement of other provisions of the Act.

What I would suggest in answer to your question, sir, is this: That when this bill becomes law, as we hope it will, probably the first thing the board would do would be to formulate regulations for the procedure to be followed with respect to agreed charges. They would do that under their general power in the Act to make regulations for the enforcement of any and every provision of the Act. In the making of these regulations with regard to the publication and filing of tariffs they acted under that power, and they have the same power to make regulations with regard to the enforcement of part 5 of this bill.

By Mr. Howden:

Q. Will the board have power to control or regulate these agreed charges?—A. Unquestionably. No charge can become effective unless the board approves it, and they do not approve it until any party or shipper who suggests that he is being discriminated against by that charge has been heard. And if the board finds that he is being discriminated against they may dictate for him such a charge as will remove the discrimination.

By Mr. MacNicol:

Q. May I ask if the opposing carriers will have the opportunity to present their arguments as well as— —A. Oh, yes, sir.

Q. As well as the opposing shippers?—A. For example, I would anticipate confidently that when part 5 becomes effective the board would then formulate regulations, and they would, as they always have in the past, send out a draft of those regulations to the railways, to every board of trade in this country, to the Canadian Manufacturers' Association, to the Canadian Industrial Traffic League, and to all bodies which represent shippers collectively. And they would set out for hearing representations with regard to the specific regulation. Every one will freely admit that that has been the practice of the board in the past with regard to any general regulations which affect the public or in which the public have any interest. That sort of thing is being done from day to day and has been done from day to day for the last thirty-five years. The public are heard not merely after the event, but they are heard on the settlement of these regulations. So that boards of trade generally, if they think that the regulations proposed by the board are inadequate in any degree, or that they do not provide sufficiently for notice to parties who are interested, will have the opportunity of appearing before the board and suggesting what form of notice is more desirable than that proposed in the draft legislation.

By Mr. Howden:

Q. And no agreed rate shall become effective until all parties concerned have had an opportunity to criticize and register their objections?—A. Precisely.

By Mr. Edwards:

Q. The objections which I receive, and I presume most of the members receive the same objections, are from small shippers who feel that they will be discriminated against in these agreed charges. Now, assuming a large shipper has an agreed rate with the railway to take his shipments by carloads or by the L.C.L. rates, as it happens to be. The rate is approved by the board and the notices go out, but does the small shipper receive the same treatment with regard to rates as the larger shipper under similar circumstances?—A. Unquestionably, sir.

Q. That is, if he is an L.C.L. shipper?—A. It makes no difference how large the shipper may be on the one hand or how small on the other. The board's plain duty, which it has observed without exception for thirty-five years, is to avoid discrimination, and they have no regard to the volume of

one shipper's business as compared with the volume of another shipper's business.

Q. But they must be shipped under similar circumstances, as I understand it?—A. Yes, sir. I cannot answer you better than by relating what actually took place within the past year with regard to petroleum. The committee are no doubt all aware of the extraordinary development that took place in Turner Valley in the production of crude petroleum. There was an enormous flow of petroleum that occurred almost overnight. We were immediately confronted with the problem of handling crude petroleum in large quantities from Calgary to Regina. Now, at the same time, we were notified by the larger oil companies that we would have to meet the competition of a pipe line. In other words, that if we were not prepared to carry petroleum on a basis that was fairly competitive with a pipe line, they would build a pipe line. That is what is known in traffic parlance as potential competition, and the board, as a matter of settled practice, have regard to potential competition as well as actual competition. Well, we satisfied ourselves as well as we could what the cost would be of transporting that oil by pipe line from Calgary to Regina, and we made a rate which was not as low as the actual cost of transporting the oil by pipe line but which was low enough to discourage the oil companies from any idea of building the pipe line.

Now, then, we met the pipe line competition in the only way we felt we could meet it, and that is by limiting the application of the rate to movements of twenty-five carloads of oil at one time from one shipper to one destination, because obviously that is the manner in which oil would move if it moved through the pipe line. It developed that on the surface, at least, looked like discrimination in favour of the large refineries and discrimination against the small refineries.

Well, what happened? We published our tariff limiting the application of the rate to twenty-five carloads, and promptly two or three small refineries wrote to the board. All they did was write a letter. That is all that ever happens with regard to a charge of discrimination. It is all that will ever happen under the agreed charge section. The shipper who thinks he is going to suffer sits down and writes a letter to the board.

Q. Who wrote the letter in that case?—A. The railways sprang to action to justify their action in that case. Yes, sir.

Q. I say, who wrote the letter in that case, the pipe line company?—A. A small refinery which was located at Saskatoon, another small refinery located at Regina, another small refinery located at Swift Current, and I think there were one or two others. But there were two or three of them at any rate, and their operations were relatively small compared with those of the British American Oil Company at Moose Jaw and the Imperial Oil Company at Regina.

Well, the matter came on for hearing before the board at Regina, and the board found that in respect of one of the small refineries whose plant was located at Regina, where the Imperial plant is located, the rate could not be justified. And in respect of the small refineries that were located at Saskatoon, Swift Current and elsewhere, the rate was justified, and the matter was disposed of in that way.

Now let us assume that part 5 of this bill had been in effect at that time, and assume that we had proceeded by way of an agreed charge with the Imperial Oil Company, as we might well have done. What would have happened? And what would happen if the same situation were to arise next year? We would file an agreement providing for the rate between Calgary and Moose Jaw made between ourselves and the Imperial Oil Company on the basis of 19 cents per 100 pounds, which was in fact the tariff rate we proposed. The board would promptly say to us—even assuming they had laid down no general regulation in the meantime—"Well, whom have you served with notice of this application? Have you given notice to the other refineries in Saskat-

chewan who are in competition with the Imperial Oil and the British American? If you have not, you must do so, and things will remain as they are until you have notified these people and they have been heard." When the agreed charge came before the board, after notice to all these people, the result would have been, I suggest, if the language of this statute were observed, precisely what it was after the publication of our competitive tariff—no discrimination whatever could have been drawn between an agreed charge on the one hand and the publishing of a competitive tariff on the other, and there could have been no difference in the result.

By Mr. Young:

Q. What was actually done with respect to the small operator in Regina? —A. It was the same rate, sir, for both, but the small refiner said "I have not got the facilities—"

Q. Yes, I understand that.—A. "—to order twenty-five cars."

Q. I know that, but what was actually done?—A. The twenty-five carload limit was removed, and the nineteen-cent rate was applied whether one carload moved or twenty-five.

Mr. McIvor: Good.

By Mr. Gladstone:

Q. What was done with respect to the small refiner at Swift Current?—A. He remained on a normal basis.

Q. What would be his rate compared with the rate to Regina? Well, I think, subject to correction—do you remember, Mr. Knowles?

Mr. Knowles: About twenty-three cents or twenty-four cents as compared with nineteen cents.

The Witness: The answer is that the operations of the Swift Current refinery did not expose us to any competition at all. He was not in a position to take advantage of the pipe line and, therefore, his operation was not exposing us to discrimination. That is a situation which the board is called upon to deal with every day. And just here I might dispose of what I think is the general impression. It is assumed more or less in all of the briefs that I have seen which have been submitted to this committee that the discrimination sections under the existing Railway Act are so plain and unmistakable in their meaning that disputes do not arise. In point of fact, under the Act as it stands, there are disputes arising constantly under the discrimination sections of the Act. The board deal with dozens of them every year, and that does not arise from any desire on the part of the railways to discriminate. It arises from the fact that a rate structure is a thing that has to be kept in balance with the competitive relations of shippers all over the country. And ever since the inception of the board one chief commissioner after another has pointed out that absolute equality in the application of a rate structure is just impossible, that is all. It is Utopian to think about it, and that is why the Act says that undue or unjust discrimination is the thing that is prohibited. Everybody recognizes that absolute equality cannot under all circumstances be maintained.

By Mr. MacNicol:

Q. What is the mileage from Turner Valley to Regina?—A. 440 miles, I think.

Mr. Knowles: 467 from Calgary.

By Mr. MacNicol:

Q. About 500 miles, and what was the rate then set by the board?—A. The rate was nineteen cents.

Q. The board accepted the nineteen-cent rate?—A. Proposed by the railway.

Q. The board checked over the problem of whether nineteen cents was too high or too low?—A. Oh, yes, there were elaborate statements to consider what might be done by way of pipe line transportation, and so on.

By Mr. Young:

Q. I understand there is a small refinery at Saskatoon?—A. Yes.

Q. What rate did they get from Calgary to Saskatoon?

Mr. KNOWLES: I think it is twenty-four cents.

By Mr. Young:

Q. I just want to point out here that there is a differential in the wholesale cost of gasoline at Regina compared with Saskatoon of 2·8 cents. It is higher at Saskatoon. Turner Valley oil is closer to Saskatoon than it is to Regina, but under this very thing that you have done you have forced that oil up to Regina. You do not give a proper rate on gasoline as compared to the crude going to Regina. You will not permit the small refiner at Saskatoon to get a rate that is comparable on one car going to Regina and the same one car going to Saskatoon to the small refinery, and that is discrimination which in my opinion is unjust discrimination. If this went through, would we be led to believe that that same kind of unjust discrimination would be favoured by the railway companies?—A. I will answer you in this way, sir; that if the board should find as a fact that unjust discrimination exists to-day, the same considerations would apply in the determination of unjust discrimination on any application that we might make for the approval of an agreed charge. In other words, wherever the competitive situation would justify the shipper complaining to-day of any abuses of competitive rates that we might have in effect, he would have the same right to object to any agreed charge that we might make.

Q. Do you think that if it is fair to take one carload of crude from Turner Valley to Regina at 19 cents, it is unfair to refuse that one car coming from Turner Valley or Calgary to Saskatoon on the same basis?—A. You mean assuming the mileage is the same?

Q. It is a little shorter.—A. It depends entirely upon the competitive condition. It would be too long a story for me to attempt to justify that situation here. As a matter of fact, the committee would probably have to spend a very considerable time analysing the whole situation before you could say whether a difference in the rate from Calgary to Regina and Calgary to Saskatoon could or could not be justified. That is the particular function of the Board of Railway Commissioners, and it will remain absolutely unaffected after you approve the provision for agreed charges in the bill. Then, next, there is this objection; I am not sure that this objection was referred to in the brief of the Canadian Manufacturers' Association, but it was suggested in one of them that I had and which I think properly belongs in this category. It is objected that small shippers have not the time to attend sessions in Ottawa or the money necessary to employ lawyers to protect their interests. Our answer to that is that the objection is absolutely without foundation. Anyone who is acquainted with the board's procedure knows that complaints are investigated as searchingly by the board on a mere letter from an aggrieved shipper as they are under the most formal procedure, and that sittings are held by the board themselves throughout Canada at least twice a year and sometimes more frequently, and they are held at the convenience not of the railways but of the shippers; and the board in addition to the regular routine followed of visiting the west twice a year very frequently make special trips out there to hear any given complaint; as was done in the case of the movement of petroleum to Regina. The board made a special trip to Regina and

the railway officials all went along and the hearing was held at the convenience of the aggrieved shippers who had done nothing but address a simple letter to the board complaining that these rates were discriminatory.

By Mr. Howden:

Q. Would you say that the board would dispose of complaints without hearings?—A. Yes, sir. They dispose of many of them by that course.

Q. I think I heard it stated in this room that unless a complainant appeared before the board his case would not be dealt with?—A. That is far from being so.

The CHAIRMAN: I think experience shows that more than 50 per cent of the applications received by the board, considerably more than 50 per cent, are dealt with by the exchange of correspondence between the parties in interest.

Mr. HOWDEN: I just wanted to have that established because I had heard it.

The CHAIRMAN: I think Mr. Campbell can tell us that. Mr. Campbell, is that practically correct?

Mr. CAMPBELL: I would say 80 per cent were disposed of in that way.

The CHAIRMAN: And, moreover, if an applicant desires to be heard the board cannot under section—if I mistake not it is under section 19 of the Railway Act—the board cannot deal with it without a hearing, and they will give a hearing at a place convenient for the applicant.

Mr. MCIVOR: Who pays the expenses?

Hon. Mr. STEVENS: That would not be the case under this new part 5.

The CHAIRMAN: In what particular would that be changed?

Mr. PARENT: Any time after the expiration of one year from the date of approval.

The WITNESS: Yes, sir, but that is after the parties have been heard and after the agreed charge has been put into effect; then it runs for a year, but that is after everybody has been heard on the original application.

By Mr. Parent:

Q. In the case of a new company being incorporated, how do they stand?—A. That does not prevent him from applying for a special rate. If you look at—

Q. He can be heard before the twelve months have expired?

The CHAIRMAN: Clause 35 of section 5.

The WITNESS: Yes, the clause reads:—

> Any shipper who considers that his business will be unjustly discriminated against if an agreed charge is approved and is made by the carrier, or that his business has been unjustly discriminated against as the result of the making of an agreed charge, may at any time apply to the board for a charge to be fixed for the transport of his goods—

Q. After one year?—A. No, sir; not in section 5.

The CHAIRMAN: Not under section 35, sub-section 5.

By Hon. Mr. Stevens:

Q. Yes, but you will notice that that is limited. That is the real point. I wish Mr. Walker would elaborate. That is limited to, "the same goods as or similar goods to and being offered for carriage under substantially similar circumstances and conditions as the goods to which the agreed charge relates."—A. Yes, sir.

Q. The fear there is, Mr. Walker, the interpretation to be placed on that "similar goods to—and substantially similar circumstances and conditions." One concern might offer 20 cars of all through traffic over the year which would

involve we would say 20, 40, 50 or 100 cars, whereas the smaller shipper who can compete with an l.c.l. rate against a single car rate—that is, he finds (through economy or better efficiency) he can compete on that basis, but he could not possibly compete on an agreed rate say on 100 cars.—A. There would not be any difference between say 100 cars and one car.

Q. But you have just stated a case under the present Act which might be cited as one which might come under the agreed charge where a special rate was given because it was limited to 25 cars?—A. No, sir; the board rubbed that limitation out. The board told us we must not do that very thing. They would do the same thing to-morrow under the agreed charge section. We tried to do that because we felt we were justified in doing so because crude petroleum would move through a pipe-line in terms that were comparable with 25 carloads. We asserted that that was our justification for putting in a rate which would apply only to movements of 25 cars; but the board told us we must not do that, that would be discrimination, so that was eliminated.

Q. Would you object to the inclusion of a proviso in clause 5 which would ensure that any agreed rate that is applicable to a number of cars shall be applicable equally to single car shipments?—A. I would not have the slightest objection.

The CHAIRMAN: I would like to point out, Mr. Stevens, that the language used here is exactly the same as under the Railway Act—"substantially similar circumstances and conditions"; and in the application of the non-discriminatory clauses of the Railway Act with respect to substantially similar circumstances and conditions volume is not taken into account.

Hon. Mr. STEVENS: But, Mr. Chairman, I apprehend that one of the reasons for the introduction of the agreed charge privilege, which is a departure from the old Railway Act, is for the purpose of allowing the entry of volume as a substantial factor.

The CHAIRMAN: I do not believe so, but if you would like to be assured on that point—

Hon. Mr. STEVENS: Yes. I am asking Mr. Walker if they would object to that.

By Mr. Edwards:

Q. Would it be possible for one to make an agreed charge unless volume were specified?—A. Yes, sir; it would be just as open to a man shipping 10 cars as it would be to a man shipping 100 cars.

Q. On the same or similar goods, and under similar conditions?—A. Yes.

By Mr. Hamilton:

Q. Take the case of a specific shipment going from point A to point X, and certain conditions prevailing there which did not apply between point B and point X, but similar distances; the A to X rate might quite easily be entirely different from the B to X rate?—A. It might.

Q. For instance, in the class of competition you refer to between A and X you make a lower rate than if the potential competition did not exist between B and X—A. The point I am making, sir, is that that same competition might exist to-day with respect to the competition by the railways on the competitive tariffs which give a rate to A but deny it to B. On a complaint being received from either of the parties the board would investigate the whole situation and would decide as a matter of law and justice whether there was any unjust discrimination, and if so they would remove it. Now, they will approach the consideration of an agreed charge on precisely the same footing, and if there is discrimination they will remove it. They will remove it either by refusing approval to the agreed charge or they will remove it by saying you must give the same rate to B or we will not approve the agreed charge that you agreed upon with A.

The CHAIRMAN: Mr. Bertrand.

Mr. BERTRAND: I studied this clause very carefully yesterday and in view of the objection which was raised by members of the Manufacturers' Association I have drafted a substitution for clause 5 in such a way as I think may serve to meet some of the objections we have heard to it here. I will read my amendment:—

> Any shipper may give notice to a carrier that he intends to benefit by the agreed charges given to any of his competitors (provided the goods to be carried are the same or similar goods to and being offered for carriage under substantially similar circumstances and conditions as the goods to which the agreed charges relate) and if the carrier refuses—or does not answer in a reasonable time—the shipper may apply to the board to obtain the benefit of the agreed charges granted to his competitor. If the board is satisfied that the business of the shipper will be or has been so unjustly discriminated against, it may order that the agreed charges shall be applied (including the conditions to be attached thereto). The board shall if in its opinion the carrier has unduly refused to grant the benefit of the agreed charge order that the carrier pay the costs incurred by the shipper on his appeal to the board. The quantity of goods shall not be taken into consideration for the extension of the agreed charges to the applicant, provided the goods shall be shipped in a continuous manner and commercial quantity.

Now, the quantity of goods shall not be taken into consideration in arriving at the agreed charge to the applicant provided the goods shall be shipped in a continuous manner and in sufficient quantity. I think that would meet a large number of these objections that we have heard, objections such as those coming from the Canadian Manufacturers' Association.

The CHAIRMAN: Could you let us have a copy of that, Mr. Bertrand?

Mr. BERTRAND: Yes. Substantially it is the same.

Mr. HOWDEN: I would like to submit that we cannot possibly consider a clause of that kind at this time.

The CHAIRMAN: I do not believe we can, but I believe it will be advantageous for us to have it on record for consideration when we come to clause 35, subsection 5. I believe what Mr. Edwards and the Hon. Mr. Stevens have in mind is that under the substantially similar circumstances and conditions mentioned in section 5 of clause 35 volume should be excluded.

Sir EUGÈNE FISET: Might I suggest that the Hon. Mr. Stevens place before you the amendment he proposes when the clause is being considered.

The CHAIRMAN: Yes. It will be helpful to have it on hand so that the railways may consider it and see what effect it would have on the general character of the bill.

Mr. BERTRAND: I will leave my amendment with you for that purpose.

By Mr. MacNicol:

Q. I would like to ask a question. A moment ago you were explaining a rate that might be established between A and B and the question came up, what about the rate between points C and D—a similar distance. In determining whether a shipper C should have the same rate from C to D as a shipper from A to B has been allowed as an agreed charge, would you not have to take into consideration the physical conditions of the country between C and D, and also perhaps whether the cost of production at C was lower for certain reasons than at A, which lower costs might compensate the shipper at C for paying a little higher rate?—A. When the Board of Railway Commissioners are confronted

with a situation of that kind, Mr. MacNicol, they give consideration to the whole competitive relationship. They consider the railway condition on the one hand, and they consider the competitive situation from A to B on the other.

By the Chairman:

Q. And the situation is not changed; isn't that correct?—A. The situation in that respect would not be changed one iota under the agreed charge.

By Hon. Mr. Stevens:

Q. What I am anxious to get at is the principle. Now, you will admit that under the present railway rate structure that water competition is a factor in determining the rate schedule?—A. A very vital one.

Q. A very vital one; and I think you will agree with me that the object of part 5 is to enable the railways to meet uncontrolled truck competition?—A. That is one of its objects.

Q. One of the objects you say; the main object, I think we would be justified in saying. Now, given two points at which competitive factories are now operating—let us take three points, A, B and C (because I do not want to use names of places), we will say that there are two factories, one at A and one at B both shipping considerable quantities of goods to point C—

Mr. MacNicol: Why not use either Montreal or Toronto?

Hon. Mr. Stevens: Just let my poor head work itself.

The Witness: Points A and B are served by competitive railways.

By Hon. Mr. Stevens:

Q. Let us assume that to point C from point B there is in existence a very active competitive trucking system which does not apply to point A. Now then, this factory at B making the same type of goods as the factory at A delivers by truck to its destination at C and the railway comes along and makes an agreed rate with that shipper provided he will ship over the railway at a lower rate—carload rate—to point C; would the railway object to making the same rate from point A where there is no such competition and where that factor would not appear in justification as it does in subsection 5 of clause 35?—A. I should think that very unlikely, sir. I would think it very unlikely that they would deny it under the existing situation, because the railway's interests are largely bound up with the commercial life of the country. We make rates every day of our lives to enable a man to meet commercial competition.

Q. Yes?—A. Because if we did not he would go out of business and then where would we be, we would have no traffic.

Q. You would have no objection then, when we come to a consideration of clause 35, you would have no objection to having such a point made clear in the bill?—A. I would like to see it first. I would like to see the language. Secondly, I would like to point out there is this danger; in my submission it is very unwise in a statute of this kind to provide for specific cases, because you never know where you are going to land. I submit to you that for over 35 years the Board of Railway Commissioners have operated on the simple direction of the statute that all tolls shall be operated under substantially similar circumstances and conditions for all persons at the same rate and without discrimination. The Board of Railway Commissioners have over the course of that period of time built up a solid body of settled principles. Now they will continue to apply that body of settled principles to the application of part 5, and the moment you start to provide for a specific case you may accomplish a result you do not want.

Q. I am not saying that. Just let me ask one question further; it is this, you admit the principle of water competition now enters into the fixation of the rates?—A. Yes, sir.

Q. Then, what objection is there to meeting truck competition on a similar basis? I am reasoning that at a given point on the railways at which severe truck competition exists that trucking competition will be taken into consideration the same as is the water competition now taken into consideration —or any other kind of competition?—A. Your observation was this, as I understood it, sir; you said there is one railroad from A to B and there is another railroad from B to C.

Q. Yes, A and B are the two shipping points. Point B has trucking competition, but point A has not. Now, a factory at point B which presently enjoys the same rate as point A to point C applies for an agreed rate because of trucking competition. Now, what I am submitting is this, that under the bill as it now is drafted it would be competent for the board to approve of an agreed rate from point B to point C because of that trucking competition and to refuse the factory at A a similar rate because the trucking competition does not exist at point A. Now, have the railways any objection to incorporating in the bill a provision that it should be mandatory on the board not to allow that competition—unfair discrimination I call it—that trucking competition to give point B a more favourable rate than point A unless that rate was also made applicable to point A.

Hon. Mr. HOWE: The shipper at point B on account of the trucking competition could get a lower rate under the Railway Act as it now exists on account of the competition at point B which does not exist at point A.

Hon. Mr. STEVENS: It could not be done.

Hon. Mr. HOWE: It can be done.

Hon. Mr. STEVENS: Not under the present Act.

Hon. Mr. HOWE: It can be done where there is competition, whether from trucks or anything else, under the Act as it now exists.

Hon. Mr. STEVENS: I would question that.

Hon. Mr. HOWE: Let us ask Mr. Guthrie, who is here.

The WITNESS: There is no question about the soundness of what the minister says.

Hon. Mr. STEVENS: Do I understand that it is asserted here that two given shipping points on railways will have different rates to a third point because of truck competition to-day under the present Act?

Hon. Mr. HOWE: Certainly.

Hon. Mr. STEVENS: Before I accept that—I am sceptical—before I accept that I would like to see the rates. If you would bring down some tariff by way of proof it will more or less answer my point.

The WITNESS: It is subject to the very influences I mentioned a moment ago. For example, if the Canadian Pacific have a rate from A to C and that rate is affected by motor truck competition they will put in a competitive tariff to meet it if they see fit, and if they do not they are under no obligation to do so, but we may assume that they probably will. Now, the Canadian National has a line from A to C, which is your assumption—

Mr. MACNICOL: No, from B to C.

The WITNESS: From B to C—all right. Operating conditions are substantially similar, and they are serving a manufacturer or competitor at C. Now, if they see that our rate has been reduced to meet the truck competition they almost inevitably will apply the same rate to the same manufacturer.

Hon. Mr. STEVENS: I am speaking of the same railway. You have introduced competition between two railways.

The WITNESS: That was the way I understood your illustration.

Hon. Mr. STEVENS: I say the same railway.

The WITNESS: I see.

By Hon. Mr. Stevens:

Q. On the same railway; would you voluntarily, or would the board oblige you to give a special rate to the point at which there was competition of the kind I have mentioned. Would it force you to give the same rate to the second point as you were obliged to give to the first point; would they be obliged to do that?—A. They would not be, under the Act as it stands.

Q. Now Mr. Walker asserts that it would not be under the Act as it stands.—A. No, sir.

Q. Of course, his knowledge is much greater than mine, but I would like to see that tariff brought down here that will bear that out; because, I frankly do not believe that is correct.

The CHAIRMAN: I think Mr. Campbell can clearly substantiate that statement. Mr. Campbell, you have heard the question of Mr. Stevens?

Mr. CAMPBELL: Yes, sir.

The CHAIRMAN: That is, that when there is a railway serving to the same point of destination from two different shipping points one of these shipping points is also subject to competition—water, other rail, or truck—

Hon. Mr. STEVENS: Not water. I eliminated water from my illustration. I am taking the case of trucks.

The CHAIRMAN: All right, truck competition. There is nothing under the Railway Act to compel this company to give competitive rates from the other point which is not subject to the same competition?

Mr. CAMPBELL: No, sir.

By the Chairman:

Q. As a matter of fact there are portions which will grant competitive rates from point A to point C and will not grant the same competitive rate from point B to point C, because the competitive factors are not present as between B and C that are present as between A and C.

Mr. CAMPBELL: There are a great many rates published, hundreds of them, and the tariffs are contained all in one document. As to motor truck competition; you mean that the rate between point A and point B on a given commodity and the rate between another point to the same destination where truck competition does not exist would take the normal rate, that it would still be in effect—

The CHAIRMAN: The policy of the board in rate making with respect to competitive tariffs under the Railway Act as it stands to-day is not to compel a carrier to give to a territory where there is no competitive conditions, the benefit of the rate applying to a territory where competitive conditions exist?

Mr. CAMPBELL: I might illustrate that in this way: Supposing your destination is point C, and you have a point of origin, A, that is on the water—I know Mr. Stevens left out water competition—

The CHAIRMAN: Let us say water or other rail competition.

Mr. CAMPBELL: Let us say that point B is perhaps 150 miles inland but exactly the same distance from point C as in point A, and that the same railway operates between point A and C as between points B and C but that there is water competition between point B and point C—along the same lines as was pointed out by Mr. Stevens—and because of this water competition the railway gives the shipper at point A a competitive rate which does not apply to the

shipper from point B. Now, it may be said that the shipper from point B should have the advantage of the same rate as the shipper from point A. If the railway did not publish that rate from point A then it is not required to publish it from point B, and of course there he has this equal rate. If it did not publish its competitive rate from A the shipper in B is not in any way damaged in regard to his situation. In other words, if the railway cannot by its efforts put A and B on the same competitive footing—

Hon. Mr. HOWE: The illustration is exactly the same.

Mr. CAMPBELL: I do not think the situation is any different.

Hon. Mr. HOWE: Trucks are recognized as competition just the same as water carriers are.

The CHAIRMAN: Would it be possible to introduce in the Railway Act or this Act an amendment which would cover the point?

Hon. Mr. HOWE: Let us not start changing the Railway Act.

The CHAIRMAN: Would it be possible to considerably change the present rate structure and policy and have power to compel the carriers to give the same rate to all points subject to the same conditions of competition?

Mr. CAMPBELL: The Railway Act contains express provision in section 329 and section 332 enabling the publication of competitive rates. Now, if competitive rates had to be applied to non-competitive territory then the competitive section of the Railway Act might just as well be taken out of it. It would involve the whole competitive section of the Railway Act.

The CHAIRMAN: Are you through?

Hon. Mr. STEVENS: No. I am going to ask a question which I know is somewhat involved, Mr. Chairman; I am going to ask Mr. Campbell if he would be good enough to bring down some illustrations of authorized discriminatory rates approved by the board on points as he has described where they are affected by water rates. Now, I am quite acquainted with the board's practice regarding water rates; but I want these rates as influenced only by trucking.

The CHAIRMAN: Yes. Mr. Campbell, can you bring for the next sitting of this committee some illustrations of the point that has been raised by tariffs and a few maps maybe that would indicate to the committee how this is worked out?

I would like to review for the committee so that there will be no confusion on that point, what Mr. Campbell has just said. When there is water competition or some other competition between points A and B, if the railways do not publish competitive tariffs they are going to lose the traffic to a competitor; and that if you introduce into this Act or into the Railway Act a principle that to avoid discrimination you would have to extend to points B and C, for instance, the same provisions, even if the competitive conditions do not exist, you would immediately extend to them in the rate structure the geographical advantage which the other points have and which the non-competitive points cannot claim.

Hon. Mr. STEVENS: I am not applying my argument to water competition at all, Mr. Chairman.

The CHAIRMAN: The same principles of competitive rates are applicable where there is water competition or rail competition and now highway competition.

Mr. YOUNG: Mr. Chairman, I suggest that identically the same principle as outlined by Mr. Stevens applies in the case of carrying crude petroleum from Calgary to Regina and from Calgary to Saskatoon.

There is potential pipe line competition to Regina because there is a large refining plant there, and another one at Moose Jaw. We have in Saskatoon a small concern. The railways' proposal was that they carry a train load of 25 cars from Calgary to Regina to get the lower rate. But after they came before the board the board said "Well, we are going to give to the same small man in Regina the right to carry one individual car." But the man at Saskatoon cannot get that. We are closer to the crude supply, at Saskatoon, than they are at Regina.

Now, Mr. Stevens asks, could something be put in this bill compelling the board to give at competitive points these equal rates? What is the result of the whole business? We are living in the central part of Saskatchewan. We are a very large distributing point. We have a refinery there, and we may have a very much larger refinery. It has not been suggested so far that a shorter pipe line would be installed from Calgary to Saskatoon, a potential competitor. It may come any time. But no. That whole part of the country, not only that little point, but the whole part of the country is discriminated against right there because the board has taken the attitude that, well, here, these large ones down there, we are going to serve them but we are not going to serve the smaller ones.

I am very decidedly interested in this. I know I am talking to the wrong group this morning; I should be talking to the board about it. But I am interested to see that in connection with this bill we shall go as far as we can to eliminate conditions which in my judgment are not fair.

I recognize what the chairman said a little while ago that up to the present moment we have allowed the railways to make rates to meet competition. Let them do it there, but let the other people suffer over here at point C. Look after point B because there is competition. But it is our duty as representatives of the people to see that the people are properly served rather than the railroads.

The CHAIRMAN: Yes, but, Dr. Young, in making rates there are standard mileage rates, there are special rates.

Mr. YOUNG: I understand something about rates. You can fall down and worship them and not break any of the commandments, because there is nothing like them in the heavens above or on the earth beneath or in the water under the earth. They will carry this crude from Calgary to Regina at a rate of about four cents less, I think the witness told us to-day, than they will carry it to Swift Current. They will carry goods from Vancouver to Montreal cheaper than they will carry them to the city of Winnipeg. The rate structure is something of which no one can be very proud. I have looked into this rate structure business for the last twenty years, and I am sure of this, that as we are considering a bill of this kind we must see to it that some of the abuses which have taken place under all boards, not this particular board, are not allowed to continue, because there are places in western Canada which have been suffering very tremendously on account of these abuses, and I for one am going to see something put in this bill whereby that power to discriminate will be taken away even from the present board, for which I have a high regard.

Hon. Mr. HOWE: What you really want, Mr. Young, is to amend the railway Act, and we are not going to do that. If necessary, we will withdraw the bill.

Mr. YOUNG: I am merely saying this: That as representatives of the people it is our duty to amend the railway Act or any other Act if it is not working fairly for all parts of the country.

The CHAIRMAN: When I went to the board I went as a representative of the people. I have been eight years in the House of Commons, and I went there with the same opinion that Dr. Young has expressed this morning. But I soon discovered a great many things which the layman does not understand and

which I could not understand even after having eight years' experience as a member of parliament. That is, that it was not possible to predicate the railway rate structure in Canada on the basis of competitive rates. You have to establish standard mileage rates. These are the rates that are the foot-rule and the maximum rates that the railway can establish. Then when there is a competitive condition between two points, where the railways are going to lose their traffic unless they meet that competition, they are not compelled but they are allowed, and the board has no jurisdiction to prescribe competitive rates. But if the railways come to the board and ask that they be allowed to publish competitive rates between these two points to retain their traffic, the board examines into it and allows them, if it is justified under competitive conditions, to publish competitive rates. And if you try to extend these lower competitive rates to the whole territory where there is no competition, you would wreck the rate structure and you would wreck the railways. You would also have to provide a few hundred million dollars more to serve the country.

Mr. YOUNG: I do not think I would be quite so much pessimistic as that, Mr. Chairman. I have looked into this rate business for a long time, and I have found that in the zoning between east and west bound traffic the same principles do not apply. And while I am certainly not under this bill going to press that very large question, I merely want to say that there is a principle here which we should look into very carefully before it is allowed to go through.

Mr. HOWDEN: Mr. Chairman, I think we are out of order.

The CHAIRMAN: Absolutely. I did not want to shut out the discussion on this point because I wanted every honourable member of this committee to feel that he had not been hurt.

The point that is now being discussed is a point that could properly be discussed before the Board of Railway Commissioners, or any question of unjust discrimination between two shipping or two receiving points.

Hon. Mr. STEVENS: Is that applicable to the question I asked?

The CHAIRMAN: No.

Mr. HOWDEN: Mr. Chairman, I would like to point out that there are a number of members of this committee who have questions that they desire to put to the witness. We cannot possibly all ask questions at once. I would like to move, sir, that the witness be asked to proceed with his submission, and after that is finished we take pot-luck in getting our questions answered as best we can.

The CHAIRMAN: I understood that Mr. Walker came here to answer questions. But I would like to draw the attention of the committee to the fact that there are certain questions which we cannot dispose of here. Dr. Young's argument was directed to a condition of discrimination which he alleges exists between Regina and Saskatoon. Well, if such an unjust discrimination exists, the board is the proper forum before which that matter should be discussed. I am going to ask Mr. Walker now if he is through with his presentation or if he would desire to continue being questioned.

The WITNESS: I am in the hands of the committee as far as questions are concerned, but I have a number of other submissions to make.

The CHAIRMAN: Mr. Walker was preparing to develop his answers to some of the criticisms offered against this bill, and it may well be that he will answer many of the questions now in the minds of the members.

The WITNESS: It is submitted, sir, that this bill will drive the truck operators out of business and deprive shippers of the benefit of truck competition. My friend, Mr. Rand, in his original statement has answered that to a large extent, but I desire to add this comment: That if the objection means that the

railways will be able to offset some of the advantages such operators now enjoy because of their unregulated position, it is true. That is one of the essential objects of this bill, to put the rail carriers in a position to meet to some extent, at least, the advantage that the truck operator now possesses because he is not regulated in any measure whatever.

If it means, on the other hand, that the railways, by means of agreed charges, will carry traffic at rates ruinous to the trucker, it is simply nonsense, because the board would not permit this waste of railway revenues even if the railways were foolish enough to attempt it. The board has power to prevent the railways from carrying traffic at rates that are not remunerative or, in other words, unreasonably low, just as they have power to prevent the railways from carrying traffic at rates that are unreasonably high. And their settled practice in regard to competitive rates is not to regard a rate as competitive if it goes below the competitive necessities of the occasion.

In addition to that, you have in this bill the explicit provision of subsection 11 of section 35 which provides that on any application under this section, dealing with an agreed charge, the board shall have regard to all considerations which appear to it to be relevant and in particular to the effect which the making of the agreed charge or the fixing of a charge is likely to have, or has had, on the net revenue of the carrier.

The only object for the insertion of that provision is that the railways shall not be permitted to ruin any competitor by the application of rates that are not reasonably remunerative.

Then it is objected: That the words of section 35, subsection 1, which read:—

> Notwithstanding anything in the Railway Act or in this Act or in any other statute, a carrier may make an agreed charge—

have the effect of repealing the discrimination sections of the Railway Act. In our submission the words do not bear any such interpretation. They were inserted, obviously, because under the Act as it stands the board would have no power to approve an agreed charge, and it would be illegal on its face even though there may be no one else but the parties to that rate who could by any stretch of the imagination be affected by it. And the draftsman obviously thought that in the face of the express prohibition in the Railway Act to the making of an individual or agreed rate he should make it abundantly clear that an agreed charge should not, merely because it is an agreed charge and altogether regardless of discrimination, per se be illegal. And for the purpose of making that clear I think any careful draftsman would have used some such words as these.

Then if you have regard to the terms of part 4, the sections contained in part 4 repeat with reference to steamship lines and air lines, who are for the first time brought within the rules prohibiting discrimination. Part 4 contains all the provisions with reference to discrimination that presently exists in the Railway Act with regard to railways. And yet when you come to agreed charges, the section commences:

> Notwithstanding anything in the Railway Act, or in this Act. . .

In other words, those words mean nothing more than this: That the discrimination sections of the Act and the agreed charges sections of the Act are to be read together, and that when the Act says on the one hand you must not discriminate, it says on the other hand, although you are prevented from discriminating, an agreed charge shall not per se be discrimination; but if the board regards it as discriminatory, they can refuse their approval of it.

By Mr. Bertrand:

Q. The words "or in this Act," could well be left out.—A. Well, sir, if you did, then the licensed carriers, the steamship lines, and the air lines would be

in the same position as the railways. I mean to say, they are prohibited by the terms of this Act from discriminating. It goes on to say, with regard to them as well as with regard to railways, that you may make an agreed charge. Well, the two things are to some extent consistent. They sort of cancel out one another.

Q. The agreed charge is the dominant feature of this Act.—A. But by no stretch of the imagination would any counsel, I submit, construe those words—"Notwithstanding anything in this Act"—as repealing any of the discrimination sections of the Act. The best evidence as to that is if you take the English Statutes of 1933, which served as the model for part 5, you will find that in addition to these words—"Notwithstanding anything contained in this Act"—they provide by an express section for the repeal of the discrimination sections in the Road and Rule Traffic Act which corresponds to the Railway Act of Canada. In other words, the draftsman there did want to repeal the section, and it has been held that the discrimination sections of the Railway and Canal Traffic Act are expressly repealed by the statutes of 1933 which provide for agreed charges.

The draftsman, whoever he is, who is responsible for this bill, eliminated from part 5 any clause repealing the discrimination sections of the Railway Act. And, as I say, he put in those words obviously for the sole purpose of making it clear that an agreed charge, merely because it was an agreed charge, should not be regarded as discriminatory. Then he went on to provide that when anybody suggested it was discriminatory, the board should hold an investigation and should remove the discrimination.

By Mr. Edwards:

Q. At this point I should like to ask a question bearing on one that came up in connection with the brief of the Canadian Manufacturers' Association, and that was the discrimination charge against, say, two factories, one shipping f.o.b. and the other shipping on a delivered price. Take a carload of furniture going from Hanover to the Hudson Bay Company at Winnipeg, another car going from Kitchener. The freight rate would be identical. But one was shipped on an f.o.b. basis and the other was shipped on a delivered basis. The man who is shipping on the delivered basis could make the arrangement with the railway company on an agreed charge, but the other man could not do that. That was one of the objections brought up by the Canadian Manufacturers' Association. How would you answer that?—A. I would say that that simply produces a situation similar to countless situations that arise every day where a man has to exercise business judgment in the conduct of his own affairs. There is no good reason why one man must ship on the f.o.b. system and the other on the c.o.d. system. All these situations call for the exercise of business judgment.

Q. As a matter of business policy you might also say some concerns should not take into their selling price the sales tax. Many of them do; some of them do not. It is a business policy. I am just asking you how you would explain that. You will probably say that as one man is shipping on the delivered price, the other man should also on the delivered price.—A. Well, he might not find it profitable to do so on account of a discrepancy in the rate. I do not know; I confess I am a mere lawyer.

Mr. HANSON: Would your rate be the same if you shipped c.o.d.?

Mr. EDWARDS: No. One rate is quoted f.o.b. at the shipping room door; the other is quoted on delivery at Winnipeg. In other words, the manufacturer absorbs the rail charge and includes that in his price. He has control of the shipment of the goods.

Mr. HANSON: The rate would be the same.

Mr. EDWARDS: Yes.

The WITNESS: The way it would work out in practice would be this: That the man who felt that his competitor had got an agreed charge which was going to operate unjustly against him would enter his protest with the board and there would be a hearing.

Mr. EDWARDS: But, Mr. Walker, he would not have a protest.—A. Why?

Q. Because the man who has shipped his goods on delivery controls the shipment.—A. If he did not have a protest then the consignee would. It is as broad as it is long. Somebody connected with each transaction has the right to protest if he is hurt; I do not care whether he be the shipper or consignee.

Mr. CAMERON: They are both shippers within the meaning of the Act.

Mr. EDWARDS: Yes, but there is a difference in the policy.

The WITNESS: Moreover, the board makes no distinction between shippers and consignees so far as hearing grievances are concerned. Any party to a contract of carriage has the right to complain to the board and an equal right to be heard.

Mr. EDWARDS: Yes, but he would have no complaint.

Mr. MAYBANK: There has by that time been publicity of the rate?—A. Yes, necessarily.

The CHAIRMAN: I would like to understand Mr. Edwards' objection because I do not see how the trouble arises.

Mr. EDWARDS: I have no objection, Mr. Chairman; I was just bringing up the point as brought up by Mr. Walsh the other day on behalf of the Canadian Manufacturers' Association. He gave an illustration of two carloads of furniture leaving Hanover, Ontario, I think, and one leaving Kitchener, both consigned to the Hudson Bay Company at Winnipeg. In the one case the shipper quotes his goods f.o.b. Winnipeg; in other words he absorbs the freight. The other man ships f.o.b. the shipping door. He does not absorb the freight; in other words, the consignee absorbs the freight. So that in the first case that man would make the arrangement on the agreed price with the railway.

The CHAIRMAN: Yes.

Mr. EDWARDS: But the other man would not have that opportunity.

The CHAIRMAN: Yes, but the other man could complain of the rate.

Mr. EDWARDS: No; there is no difference in the rate.

Mr. ISNOR: What has the bill got to do with that? That is a matter of business.

Mr. EDWARDS: If you had to ship every day you would probably know a little more about it.

Mr. ISNOR: Mr. Chairman, may I say—

The CHAIRMAN: I would like to clear that point up if I may. I do not see that the provisions of the Act would create discrimination in that particular case.

Mr. EDWARDS: I am citing that, Mr. Chairman, as one of the points brought out by the Canadian Manufacturers' Association.

The CHAIRMAN: Yes, but I do not understand in what particular way the provisions of the Act that we are now considering will add to that.

Mr. EDWARDS: None at all. I am just asking Mr. Walker if he has some solution to it.

The WITNESS: The answer I would make would be this: That either party to the rate could apply to the board on the ground that the agreed charge was discriminatory in so far as the movement of his traffic was concerned. When

that application came before the board, the board would have not merely the factors you have given us but all the factors of the competitive relationships of those two shippers. And they would decide, first, whether or not the agreed charge was discriminatory in its effect. If they decided that it was discriminatory, they would remove that discrimination in either of two ways: they would either say, "We will approve this agreed charge on the condition that you extend the same charge and the same conditions to the complainant, if that will meet his difficulty, or; if that will not meet his difficulty, we will disallow the agreed charge because it is discriminatory and because the extension of the rate to the complainant does not remove the discrimination."

Mr. EDWARDS: That would answer that.

The WITNESS: That is a situation that often happens to-day in the application of competitive rates.

Then, sir, the next objection that I draw from the complaint is that the bill will add to the already chaotic condition which exists as between the railways and the unregulated carriers. We say in answer to that, as follows: This general statement is repeated by many instances but is unsupported by any factual assertion. One may ask, "Why should such a result follow?" The shipper may obtain an agreed charge with the railway by agreeing to ship all rail throughout the year, either the whole or any agreed percentage of his traffic. His competitor, if he so desires, may do the same. If, on the other hand, the competitor's business needs so dictate, he may still take advantage of the ordinary competitive tariffs as they exist from time to time.

Mr. EDWARDS: He would not ship all rail, Mr. Walker, all the year round if he could ship lake and rail portions of the year.

Mr. MAYBANK: He could make his agreement as to part of it.

The WITNESS: I can see many opportunities for the exercise of business judgment. One shipper may be conducting a business where his traffic moves with a fair degree of regularity throughout the year, and it may suit his purposes to make an agreement with the railway to ship either all of his business or a great percentage of it by rail exclusively. The business necessities of another man may mean that the bulk of his business moves in the season of lake nevigation.

Mr. EDWARDS: L.C.L. would be the only thing affected by lake navigation.—A. By no means.

Q. Well, pretty much, would it not?—A. Oh, no; there are enormous quantities of pacakaged freight that move by carload on the one hand by rail, and by ship on the other hand.

Q. Light weight goods, is that the idea?—A. Bagged things like seed, sugar, and all kinds of commodities.

Q. And canned goods?—A. Yes, canned goods. If, on the other hand, the competitors' business needs so dictate he may still take advantage of the ordinary competitive tariffs as they exist from time to time. There were some shippers in Alberta—I quoted an Alberta case in which we got a complaint or a submission from somebody in Alberta—I have forgotten whom—where some of the opposition comes from. This shipper may make an agreed charge for the carriage of his goods by rail freight, and his competitor has precisely the same opportunity; but if he prefers, or if he as a matter of judgment prefers to ship by truck in the summer and by rail in the winter or when roads are impassable he still has the advantage of any number of competitive rates which may exist from time to time where facilities are not required to be kept up the same as they are with the railways who are obliged to maintain an efficient system in operation at all seasons and at whatever cost, and we contend that they should not be subjected to the competition of unregulated carriers who may carry on the basis of agreed charges or whatever basis of cut-throat competition they may see fit to introduce. That is a problem with which we are confronted every day.

Then, it is contended, sir, that the proper remedy for this railway transportation situation lies not in the remedy provided by this bill but in regulation by the provinces or preferably by the Board of Railway Commissioners. We say in answer to that: It may be admitted that the ideal solution of the problem would be regulation by the Board of Railway Commissioners or by the new Transport Commission. This solution is impracticable because of the constitutional difficulty (we all know what that is) and it is well know that following the recommendations of the Duff commission a Dominion-Provincial conference was held regarding the regulation of highway transport which ended in complete disagreement. Some of the provinces, notably Ontario and Quebec, where the problem is most accute, being unalterably opposed to any surrender of provincial jurisdiction.

So far as provincial regulation is concerned it is common knowledge that even where regulations have been enacted there has been no enforcement, and it may well be doubted if any of the provinces are able or disposed to set up the organization necessary to police and enforce provincial regulations. There has moreover been little or no effort made to regulate contract carriers by whom a large part of the tonnage is carried. And, there cannot be any effective regulation of private trucks owned by the shipper himself. This bill cannot, in our submission, be used in any sense as a means to destroy competition, but it will to some extent restore the balance between the railways and their unregulated competitors.

Then, my last answer to the last objection is this: The objection is, that the bill makes a vital change in the law relating to goods carried under "substantially similar circumstances and conditions." In my submission there is no material difference between section 314 of the Railway Act and section 35, subsection 5, of the bill, the only distinction that can be drawn widens the field for a finding by the board of unjust discrimination, because section 314 is limited to goods "of the same description"—in other words, it is goods of the same description which we must charge for at the same rate—whereas under the bill a shipper may be granted a charge which will remove any discrimination, whether he is shipping goods of the same character to those to which the agreed charge relates or not. They widen the field to that extent.

Now, I do not know, Mr. Chairman, that this is the proper time and place to which to analyse and compare the sections of this Act. I would think, subject to what the committee may desire, that that might more properly be done when you get down to the consideration of the bill clause by clause. But I am prepared to discuss it now if the committee so desire.

Concluding this part of our submission, may we point out that shippers, boards of trade, and similar organizations all agree that the existing regulation results in grave injustice to the railways, exposed as they are to unregulated competition. Even the motor transport operators themselves admit the need of regulation. I suggest that parliament will still be in session from year to year and if any or all of the dire consequences eventuate which the opponents of this bill apprehend, it is inconceivable that a remedy will not speedily be found. And I add to that that the ordinary common business principles of the railways will prevent the creation of any of these possible abuses that the opponents of the bill have conjured up, because it is obvious that if the railways started in to do either; to ruin their competitors by the application of such low rates that the competitor could not live, or if we started in on a system of agreed charges which resulted in discrimination, a remedy would be proposed and enacted almost before you could say Jack Robinson; even though the board cease to function as they have during the last 35 years.

We ask—is it unfair that the railway carriers should be given opportunity to demonstrate that under the provisions of this bill they cannot meet on fair terms with their unregulated competitors, without either destroying those competitors or subjecting the shippers or the public generally to unjust discrimination.

The CHAIRMAN: Are there any questions?

Mr. ISNOR: I want to ask a question to clear up my understanding of a point raised by Mr. Stevens, before doing so may I just make a remark to Mr. Edwards through the chair? He raised a question in regard to the shipment by certain firms, one delivery from the factory to the purchaser charges paid, and the other delivered freight collect; he turned to me and said if I were a shipper I would understand it. I do not know just how long Mr. Edwards has been a shipper, but I know I have been buying for 31 years and I do not see that that has any connection whatsoever with this bill.

Mr. EDWARDS: Let me tell you in a friendly way, and through the chair, that I did not bring the question up. I just referred to it as being in the brief of the Canadian Manufacturers' Association and it was one of their objections to the bill, and I asked Mr. Walker to explain it.

Mr. ISNOR: I say it has no connection whatsoever with the bill.

Mr. EDWARDS: It was one of the objections brought up by the Canadian Manufacturers' Association in their brief.

Mr. ISNOR: The point raised by Mr. Edwards has no connection with this bill, because that is a private arrangement between the shipper and the railway I would say.

Dealing with the question raised by Mr. Stevens I want to get some additional information. In his illustration I believe he mentioned shipping points A and C, taking them at 600 miles apart. We will say that there is a certain rate, let us take as an example a rate of $1. Then, there was another rate between A and B, and between points B and C; or, in other words if it is $1 say between points A and C, the same rate does not exist from point A to point B—is that correct, Mr. Campbell.

Hon. Mr. STEVENS: You have not stated it correctly.

Mr. CAMPBELL: Mr. Stevens illustration was with respect to shippers at points A and B to point C.

Mr. ISNOR: That is what I want to understand. The illustration given today by Mr. Stevens was, as I understand it, that there was an unjust discrimination from point A to point B as compared with the rate from points B to point C.

Hon. Mr. STEVENS: No, you are wrong. My illustration dealt with the difference in rate from point A to point C and from point B to point C. I hope I have made that clear.

Mr. ISNOR: I want to understand it correctly. This competition from point B to point C was truck competition. There is an application made and the rate is lowered. Would not the shipper at point A enjoy that lower rate from point B to point C so he would be in the same position exactly as he was before; or rather he would enjoy the lower rate on account of the adjustment made between point B and point C. I think that is clear, is it not?

The CHAIRMAN: Mr. Stevens put the following case: The point of destination he called point C. There were two shipping points, A and B. All three points were served by the same railway. Then, the railway gives a rate from A to C because there is truck competition. Would it be compelled to give the same rate from point B to point C even if there is no truck competition between points B and C?

Mr. ISNOR: Yes. That is a little different from the way in which I put it.

Mr. MACNICOL: The answer was that they did not have to give the same rate.

The CHAIRMAN: The answer was they were not compelled—it could not be compulsory.

Sir EUGÈNE FISET: Mr. Stevens is going to put into writing his proposal and then it will be in proper form.

Mr. O'NEILL: As a member from British Columbia I have been receiving a lot of communications to the effect that this clause on agreed charges is going to act in a discriminatory manner against people in British Columbia who are shipping by water. There has been nothing said here this morning in regard to that. There was nothing said, so far as I recall, by the Canadian Manufacturers' Association with regard to that. But I have a lot of communications from British Columbia on that very point—

The CHAIRMAN: Would they desire to be heard, or would they file their submissions in writing?

Mr. O'NEILL: Well, I do not know whether they will do that or not; I think probably they will do that; but as a member from British Columbia I have to answer these items and all I want is information which will enable me to do that.

The WITNESS: Just let me say this, sir: At the proper time we will of course be prepared to answer those objections; but whether they appear here or whether they do not appear here I assume that the usual practice will be followed and any submissions they have made in writing will be placed on the record, and those objections will all be answered; but obviously it would be unintelligible if I started in to answer all those objections before they are presented to the committee. The reason that I dealt with agreed charges to-day was because of the fact that representations with respect to them were submitted in the brief of the Canadian Manufacturers' Association and they are presently before the committee; we are very ready to deal with the whole situation.

By Mr. Isnor:

Q. Does this apply to shipping in British Columbia from one part of the province to another?—A. I understand that their complaint is that under the agreed charges section we might agree to a charge which was so low that the intercoastal boats which now operate between Montreal and Vancouver would be put out of business. Well, I think the slightest examination of the rate basis would establish that it is a most fanciful objection.

By Mr. Bertrand:

Q. The shippers should not object to that because they are bound to pay the higher class, and they will only benefit by the lower classes?—A. Yes, sir.

Mr. EDWARDS: Mr. Chairman, I just want to ask you if I may be permitted to ask a question along a different line. It comes from a prominent manufacturing concern.

The CHAIRMAN: Surely.

Mr. EDWARDS: I think Mr. Walker has pretty well answered it, but the questions relate to this particular clause of the Act. They say:—

> We would be particularly concerned over part 5 of this bill, as it appears to us that it throws everything wide open for the greatest discrimination possible.
>
> There is nothing in this bill as we read it where we can know what rate may be agreed upon between our opposition and the carrier. We might find out in time that we were being discriminated against, but by that time our business may be shot. It costs money these days to get business and if lost through any reason, it may be hard to get it back again. Part 5 is so full of loop-holes for tying up business for an unknown period and for discrimination against the small manufacturer or shipper that we think it should be opposed.

That is from a manufacturer of farm implements, railway and warehouse trucks, and so on, who has been in the business upwards of 80 years. It is an old established firm, and that is their objection. Is there anything there you have not already covered?

The WITNESS: I do not think so.

The CHAIRMAN: Members of the committee might get a few copies of the record which is available and send them to their constituents who have been raising such questions as these. I think some of the points in Mr. Walker's statement of this morning will answer a very great many of these questions. I imagine further that these gentlemen will be available at any time during the course of our discussions to answer further points which may arise.

The WITNESS: One or the other of us will be in constant attendance and we will be happy to answer questions at any time.

Mr. O'NEILL: How many copies are being printed?

The CHAIRMAN: We have 1,000 in English to distribute to members of parliament and the senate, and the railway companies will receive a certain number of copies. I think there should be some 18 or 20 copies available to every member of this committee.

Mr. O'NEILL: This submission this morning I think is a very very valuable one and I would like to get several copies of it.

The CHAIRMAN: It will be printed.

Mr. O'NEILL: Oh, yes; but I raised that question because I am on another important committee and they met on the same morning and I could not get away from the other, that is why I wanted to get copies of the regular proceedings of this committee so that I would be in a position to know what has transpired here during my absence.

The CHAIRMAN: There is only one number which has been printed to date. That is available through the distribution office and if you applied there you should have no difficulty in getting 10 or 15 or 20 copies of this report. There has been only one report of our proceedings published so far, but everything that has been said this morning should be available for distribution some time to-morrow.

By Mr. MacNicol:

Q. Towards the close of your remarks you were in your comments more or less discounting the submission of the Canadian Manufacturers' Association; was it not founded on facts?—A. I think it is perfectly honest and sincere.

Q. Well, the Canadian Manufacturers' Association is composed of big men and I think they have a fairly good organization, and I presume that before they assembled their submission to be presented to this committee they got the best available advice that they could from their members; and I have just been wondering why it is that they are so concerned over the bill after what you have said with respect to it?—A. Well, I frankly say that there apprehensions are unfounded. I give them the utmost credit for sincerity of purpose, sir; but I just can't believe that there is any foundation in fact for the apprehensions they have given expression to.

Q. You said something else, about trucking competition?—A. Mr. Stuart Brown admitted that he was not a lawyer, and I have to admit that I am; but I assume he must have discussed the legal phases of this bill with his counsel or solicitor, and after we have discussed it I suggest that no doubt the committee will have the benefit of advice from the draftsmen in the Department of Justice —or whoever it was—who are responsible for this arrangement.

By Mr. McKinnon (Kenora-Rainy River):

Q. No doubt you are in receipt of a brief from the Western Millers Association?—A. Yes, sir.

Q. As I understand it grain that is held over at different points to be milled and shipped out takes the grain rate; that is correct, is it not?—A. Yes.

Q. They seem to entertain very strong fears that they will be damaged severely by the application of this bill; could you give me any information on the matter?—A. Yes, sir. I understand that their apprehension is not because of any interference with the milling in transit rate but they take the position that because grain and grain products move to the head of the lakes on a parity of rates they ought to move from the head of the lakes eastbound on a parity of rates. Now, the simple fact is that grain and grain products never have moved from the head of the lakes eastward on a parity of rates; nor has there ever been any fixed relationship between the two. For example—I do not know whether I have the figures here with me or not, because I did not anticipate that was coming up in discussion—for example: Last year I think it was the rate on grain per hundred pounds from the head of the lakes to Montreal was 6·6 cents, and at the same period of time the all-water rates on flour from the head of the lakes to Montreal was 15 cents. The rate on grain is fluctuating constantly. The rate on flour so far as the ordinary lake and rail movement is concerned remains fixed and is regulated by the board; but so far as some of the bulk carriers are concerned it fluctuates. Now then, notwithstanding that situation the western millers I understand say that if the lake carriers are regulated with regard to the movement of flour and not regulated with regard to the movement of grain they will be seriously discriminated against. Well, frankly, we disagree. For example: At the present time in the year 1937 over 54 per cent of the flour—by which we mean all grain products, you know; grain and grain products—moved east from the head of the lakes on a lake and rail movement which is regulated by a rate approved by the Board of Railway Commissioners. That left 45 per cent going on the all-water route. Now, out of what went on the all-water route there was 76 per cent of that handled by the Canadian Steamship Company, who I understand generally are in favour of regulation; so that in the aggregate there was 89 per cent of the flour moving from the head of the lakes that moved either on rates that are regulated by the board or on rates that are published by the Canada Steamship Lines, which company is in favour of regulation; which leaves only 11 per cent of the flour moving on unregulated rates. So that if only 11 per cent of the present movement is being brought under regulation it is very difficult to see where the matter should be of any vital consequence.

Now, that I must say is a very inadequate explanation, but I did not expect to be called on this morning. In due course I will make a complete answer to the point raised by the western millers.

Mr. McKinnon (Kenora-Rainy River): Thank you very much.

By Mr. Howden:

Q. I just want to ask a question: There is nothing in the provisions of this bill that provide for regulation or control of highway truck traffic is there?—A. No sir, not directly.

Q. And similarly, there is nothing in the provisions of this bill that will have any effect on the inter-coastal water traffic, such as you mentioned, between Vancouver and Montreal, is there?—A. I would not say that it would not have an influence, sir.

Q. It would have no control over them?—A. No control? Oh yes. I am quite wrong. I did not apprehend your question. Rates on inter-coastal movements; that is, on movements from Vancouver to Montreal or vice versa are to be regulated under—

Q. Let us suppose it is a ship of foreign registry which is moving between Vancouver and Montreal; you are not in a position to control rates with them, are you?—A. Oh, no.

Q. And that means that you must meet this competition the same as you meet highway competition, as best you can. You cannot control or regulate highway competition, therefore you must meet it somehow or other—isn't that the situation?—A. Yes.

Q. And the same thing applies to shipments between Vancouver and Montreal by boat?—A. At the present time, yes.

Q. As at present. Is there anything in the bill that will control that water rate from Vancouver to Montreal?—A. They will be required to publish the detail of their tariffs, but they will still be able to put into effect any rate they see fit.

Q. They will not be subject to submitting their special rates to the board for approval?—A. No, they will do the same as we do; the only distinction will be that they must publish their rates, and when published they must not discriminate between shippers, just as we are regulated now under the Act.

Q. As far as highway trucks are concerned the railways, if we assume that it is unfair competition, will still be exposed to unfair competition from the highway trucks?—A. Yes, sir. We will still be opposed by the unregulated carrier. We will not be exposed to the same extent as we are now to unfair competition because this will remove to some extent at least the unfairness of the competition. That is the whole purpose of the bill since parliament is not in a position to regulate these carriers. It cannot regulate them unless or until there is some change in the British North American Act. We are asking that at least you remove some of our fetters, so that we can fairly compete with those whom you have no power to regulate.

Mr. DUPUIS: What is the answer to the discrimination charged by people in Montreal who state that there is one rate on shipments between Montreal and Toronto and another rate between Toronto and Montreal?

The CHAIRMAN: That question does not arise on this bill. I am sorry, it would be out of order. That is a question which can be determined before the Board of Railway Commissioners.

By Mr. Hamilton:

Q. I understood witness to say that they hoped that this will in some measure restore the balance between the railways and their unregulated competitors, mainly the trucks, through the medium of the agreed charges?—A. Yes, sir.

Q. Yes; and I suppose it is anticipated that there will be a large number of agreements of that type where there are competitive services out of a shipping point? I would say, ultimately; but frankly we are going to watch closely, we are not going to start in on any wholesale campaign of granting agreed charges—

Q. But if it is at all successful it means that localities, we can say A, B and C again; locality A that is located where there is competition over a period of months or years, well built up roads, would have rates that would be a little more advantageous than they would be from B where they did not have the competitive services, and in consequence of that over a period of time would be that point B would be at a disadvantage.—A. I do not think that result could follow, sir.

Q. It is there to stay——A. For the simple reason that if it does exist the traffic will move from the one locality to the other. You understand that the board have the same jurisdiction to prevent discrimination between localities as they have between individual shippers.

Q. I would point out to the witness that he is thinking in terms of places where there are lots of highways and water routes. There are places where that does not exist to the same extent. It seems to me as between localities over a period of years that this locality which has the benefit of competitive services is the one which is going to gain a considerable advantage in shipping rates over the locality which does not have the benefit of these competitive types of service.—A. I do not see that it will materially change that situation at all, sir, because we have to-day power to publish competitive rates just as we have or will have if we make an agreed charge. The reason why we hope to take advantage of competitive rates is this: To-day we have truck competition between A and B. The only way we can meet that under the existing situation is to publish a truck competitive rate, and one man who realizes the unfairness of the existing situation takes advantage of that competitive rate and continues to ship by rail. But the rate must be applied to every shipper, and nine-tenths of them will take advantage of the competitive rate in the winter time when truck competition either does not exist or is slow and difficult and in the summer time they go right back to the trucks.

Q. But in connection with the term "unjust discrimination," the discrimination is referable to shippers from one place; is it not quite possible that unjust discrimination might arise between localities?—A. Yes, sir.

Q. And that unjust discrimination results not from any decision of the board but by reason of the geographical location giving one an advantage and the other not.—A. Well, the board have just as wide discretion to remove discrimination as between localities as they have between shippers.

Mr. HANSON: Mr. Chairman, Mr. Tom Reid, M.P., asks for permission to give evidence before the committee.

The CHAIRMAN: Yes, I am going to deal with that right away.

Mr. HANSON: Has he been given permission?

The CHAIRMAN: Yes. Mr. Reid, Mr. Neill, Mr. Rheaume and Mr. Hushion have all asked to be heard before the committee on behalf of some of their constituents. They will be heard on Thursday, May 12, at 10.30 a.m.

We have set out tentatively the following arrangement for the sittings of the committee:—

To-morrow, Friday, May 6, at 10.30 a.m., we shall hear the shipping companies represented by Mr. Campbell of Toronto; the Vancouver-St. Lawrence Line, also represented by a gentleman from Toronto; the Ellis Shipping Company and the Canada Steamship Lines. So that to-morrow will be set aside for the shipping interests.

Sir EUGÈNE FISET: In the morning only?

The CHAIRMAN: The morning only if we can, but if we cannot conclude we will have to adjourn until the afternoon.

Tuesday, May 10, is reserved for the Air Lines. There are twenty-one air line operating companies who have been advised of the meeting.

Then on Thursday, May 12, we shall hear from the Canadian Automotive Transportation Association and the Automotive Transport Association of Ontario as well as from Messrs. Neil, Reid, Rheaume and Hushion, members of parliament who have expressed the desire to be heard on behalf of some of their constituents. If we do not conclude in the morning, we shall sit on Thursday afternoon, May 12, to hear the Hamilton Chamber of Commerce, the Montreal Board of Trade and the Toronto Board of Trade.

On Friday, May 13, the Canadian Industrial Traffic League; Mr. Burchill on behalf of the Maritime provinces; the Canadian National Millers' Association; the Montreal Corn Exchange and a representative from the government of the province of Quebec who has requested to be heard.

This should conclude the hearing of all the interested parties who have requested to be heard. After that there might be a further sitting to hear rebuttals on behalf of the carriers. Therefore, we should be able to completely deal with these hearings of interested parties during the balance of this week and next week. In the week after that we should try to get together on a tentative report.

Mr. YOUNG: On the bill?

The CHAIRMAN: On the bill, clause by clause. We will take the bill clause by clause and later on make a report.

Now, gentlemen, is it your desire that we should meet to-morrow at 10.30 a.m.?

Mr. MCKINNON (Kenora-Rainy River): Yes.

Sir EUGENE FISET: Are you sitting this afternoon?

The CHAIRMAN: The only interested parties were the railways for to-day. If there are any further questions to be put, we will hear them; otherwise the committee will stand adjourned until 10.30 to-morrow.

(At 1.05 p.m. the committee adjourned until 10.30 a.m. on Friday, May 6, 1938.)

APPENDIX

TORONTO 2, May 4, 1938.

Please refer to file 1317-5.

Lieut.-Col. Thomas Vien, M.P.,
Chairman, Committee on Railways, Canals and Telegraphs,
House of Commons,
Ottawa, Ont.

Dear Sir,—

In reading over the Minutes of Proceedings and Evidence respecting Bill No. 31, it is noted on Page 5 that the following paragraph is incorrect.

> The association membership believes transportation should be developed and maintained in such manner as will assure adequate, reliable and prompt service at reasonable rates without unjust discrimination, undue preference or unfair or competitive practices.

The paragraph should be corrected by eliminating the word "or" which appears directly after the word "unfair." While this is quite clearly explained in the copy of our submissions as reported on Page 15, it would appear desirable to have the record on Page 5 corrected.

On Page 6 the paragraph reading as follows is incorrect.

> The association made submissions to the Royal Commission dealing with transportation in Ontario urging regulation of rate and carriage matters. Evidence before that commission by many individuals, shippers and carriers, supported this view.

The correction to be made is that the word "carriage" appearing between the words "and" and "matters" should read "tariff."

On Page 26 the words following the word "to-day" at the top of the page suggest that the matter stated refers to the present conditions. This is not correct, as the party making the statement intended to convey the impression that the situation mentioned was what existed prior to the Board of Railway Commissioners coming into operation in 1904. Therefore, a period should appear after the word "to-day" and the balance of the text should read as follows:—

> Formerly we had members of our organization who had a set-up of rates that were decidedly to their advantage and to the disadvantage of other members within our organization.

Yours faithfully,

S. B. BROWN,
Manager-Transportation Department.

SBB/N.